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C O N F I D E N T I A L SECTION 01 OF 04 PRAGUE 001078

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DHS FOR DAS NATHAN SALES

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SUBJECT: DHS VISA WAIVER OFFICIALS BRIEF CZECHS, PROVIDE ASSESSMENT

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1B. (B) PRAGUE 000915

1C. (C) STATE 112505

1D. (D) PRAGUE 000123

Classified By: Consul General Stuart Hatcher for reason 1.4(b,d)

SUMMARY

11. (U) DHS DAS for Policy Nathan Sales and DHS Visa Waiver Chief Dan Sullivan met with Czech MFA Political Director Povejsil and Deputy Interior Minister Salivar on September 7. They continued with a working-level meeting on September 10. Sales and Sullivan provided details about the seven new security enhancements of the visa waiver reform legislation. The Czech Republic meets the visa refusal rate threshold for the waiver, and it meets the three discretionary provisions of the VWP bill. Czech officials expressed interest in joining the program quickly, and are anxious to receive a draft agreement that specifically outlines all of their responsibilities. Their key concerns are data privacy, which is governed by Czech legislation and EU conventions, and the technical means for sharing information with US authorities. Despite these concerns, Post believes the Czechs are prepared to move forward expeditiously to meet the 9/11 Bill standards. END SUMMARY

DHS EXPECTATIONS FOR CZECH PARTICIPATION IN VWP

12. (U) Department of Homeland Security Deputy Assistant Secretary for Policy Nathan Sales and Daniel Sullivan,

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Director of the DHS Office of International Enforcement, met with MFA Political Director Martin Povejsil and Director General for Consular and Legal Affairs Jaroslav Horak on September 7. Sales and Sullivan were accompanied by Consul General and Deputy Political Counselor. Their Foreign Ministry meeting was followed up by a meeting with First Deputy Interior Minister Jaroslav Salivar, who was accompanied by Tomas Heisman, Director of the Office of Asylum and Migration, and Martin Linhart, Acting Director of the Office of Security Policy. On September 10, the Embassy hosted a working-level meeting, which included Sales and Sullivan on the US side, as well as Horak, Heisman, Linhart and other Czech officials.

13. (U) In his meeting at the Foreign Ministry, DAS Sales stated that Central European countries had been treated as Cold War enemies or second-class citizens for too long, and pointed out the strong economic and strategic alliances between the US. and the Czech Republic. He thanked the Czech Republic for its role as a leader of the Coalition for Visa Equality and for working closely with the Administration to help bring about the passage of the "Implementing Recommendations of the 9/11 Commission Act of 2007," known as

the 9/11 Bill. According to DAS Sales, the Bill was important both as a recognition of the importance of the aspirant countries as allies, as well as from a border security standpoint. He added that on the occasion of the 9/11 Bill signing on August 3, President Bush stated that the Bill needed to go further in making room for our allies.

¶4. (U) DAS Sales said it was important to move forward quickly. He outlined the seven security enhancements (specified below) that both DHS and the aspirant countries must take in order to implement the new law. He explained that DHS planned to move forward on implementing these enhancements concurrently and estimated that DHS would need up to 12 months to meet the new law's requirements pertaining to Electronic Travel Authorization and air exit controls. He cautioned that the level of cooperation from aspirant countries in implementing the new provisions would drive the DHS assessment of its priorities as it decided where to direct its efforts; he said DHS was looking for countries with a shared vision. DAS Sales also explained that the window of opportunity to participate in the program would probably end on June 30, 2009, the date by which DHS must deploy its Biometric Air Exit System.

CZECHS EAGER TO JOIN VWP

¶5. (U) PolDir Povejsil opened his remarks by saying the Czechs were very happy with the passage of the 9/11 Bill. He called it a "significant positive development" and a "huge step forward," and added that he wanted to "walk the Czech Republic through that passage" together with the United States. He personally thanked DAS Sales for his work on the Bill. He said the Czechs recognized that the 9/11 Bill was carefully crafted, but acknowledged that it did not meet everyone's expectations. For this reason the Czechs would continue to work for the possibility to broaden the bill. Povejsil stressed that Czech solidarity with their neighbors

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was a matter of political principle, and was in no way meant to devalue their appreciation for the new Bill.

¶6. (U) Povejsil agreed with DAS Sales on the need to move forward quickly to implement the 9/11 Bill. He committed the Foreign Ministry to work toward eliminating any and all bottlenecks. This was echoed by First Deputy Interior Minister Jaroslav Salivar in a meeting later in the day. The MOI would provide most of the expertise to comply with the new provisions, and the Deputy Minister expressed his hope that the Czech Republic could join the Visa Waiver Program as soon as possible.

¶7. (U) Czech officials discussed with DAS Sales their concerns about data privacy issues, primarily as they related to EU-imposed data privacy requirements. Although hopeful that the potential problems were technical in nature, Czech officials noted that they could not be ignored, and would apply equally to any other EU country seeking admission to the Visa Waiver Program. Czech officials also referred with approval to the US' assertion in January (Ref. D) that the US. would not ask VWP aspirants to do anything the US. itself was not willing to do (reciprocity). They also inquired about the issue of equality, i.e. whether the new measures would apply to present VWP countries as well. DAS Sales said they would, although they would be phased in over time.

DHS TO DEPLOY ELECTRONIC TRAVEL AUTHORIZATION BY 2008

¶8. (SBU) In the September 10 working-level meeting, DAS Sales explained that Electronic Travel Authorization (ETA) would be a web-based system similar to the one used by Australia, and all visa waiver travelers would be required to use it. The Czechs specifically asked what information it would collect, whether approvals would be valid for single or multiple entries, and for how long. Sales said it would collect information similar to that collected on the I-94, but not as much as collected on a visa application. Although a decision had not yet been made, approvals would probably be

valid for multiple entries, and perhaps for as long as three years. Travelers who were not cleared, or whose travel documents did not meet biometric passport guidelines, would still be able to apply for a US. visa. Czech officials pointed out that the ETA provisions might prompt reciprocity measures from EU countries to US. travelers, and DAS Sales responded that the US. welcomed such reciprocity, because it would increase security for all countries involved. DAS Sales estimated that DHS would have the ETA developed and deployed in 9 to 12 months.

¶9. (C) Sales and Sullivan privately told conoffs that DHS has not yet determined which database ETA will run against. Some databases, such as CLASS, could generate a lot of false positives, which would require either human clearance or a high rate of referrals to consular sections for visas.

PASSENGER INFORMATION EXCHANGE IS AN ONGOING CONCERN

¶10. (C) The 9/11 Bill requires aspirant countries to enter into an agreement to share information as to whether citizens of that country traveling to the US. represent a threat to our security or welfare. According to DAS Sales, DHS would interpret this to require sharing of watchlist information on known or suspected terrorists and perpetrators of serious crimes. Sales suggested this could be done in one of two ways: Either the Czech government could share general watchlist information, or DHS could transmit passenger biographic information to the Czech government, which would then perform the namechecks. The biographic information would come from the Passenger Name Record (PNR) data from airline reservations, and from the Advanced Passenger Information System (APIS) data from the machine readable zone of a passport. DHS noted that some agreements already exist with other countries, including some current VWP countries.

¶11. (C) In addition to information regarding passengers on flights between the host country and the United States, DHS is also seeking information regarding passengers on flights between the host country and other countries. Although it is possible this might be limited to countries or nationalities of interest, DHS would prefer information regarding all flights. If any information derived from the data sharing program results in an arrest, the USG also asks to participate in joint investigations and legal proceedings as appropriate.

¶12. (C) Czech officials raised some technical and legal concerns regarding data sharing. They noted they could not exceed European Union data privacy standards. Subject matter experts from the Ministry of the Interior and the Ministry of

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Foreign Affairs also stated that any agreement that affects the rights of citizens could be subject to parliamentary ratification. In the MFA meeting Povejsil noted that these were technical issues, not political, and MFA officials are hopeful that they can be resolved.

LOST AND STOLEN PASSPORT INFORMATION

¶13. (U) DAS Sales explained that aspirants to join the VWP program must report all blank passport books and all personalized passports, including passport number, date of issue, and date of loss/theft, within 24 hours of the report of the stolen document. DHS also requested the creation of a mechanism to provide document verification for Visa Waiver Program travelers on a 24/7 basis.

REPATRIATION APPLIES ONLY TO CURRENT CITIZENS

¶14. (U) Czech officials in every meeting expressed concern over the wording in the 9/11 Bill that requires VWP countries to agree to repatriation of current and "former" citizens of their country. DAS Sales stated emphatically that the US. had no intention to require repatriation of "former" nationals. The US. was seeking agreements to accept repatriation of citizens or nationals within 3 weeks of a final order of removal. Note: Currently, Czech citizens are

removed to the Czech Republic from the US. with some regularity and without any problems. End Note.

CZECH REPUBLIC MEETS DISCRETIONARY SECURITY ENHANCEMENTS

¶15. (SBU) DHS visited Czech passport issuing authorities earlier in 2007 (Ref. D), and were pleased with its security standards and controls, which include a centralized issuing authority, a serial number in blank passports and a biometric chip. DHS asked for an annotation indicating if a passport was a replacement for a stolen or lost passport. Czech officials noted they would collect fingerprint information for passports well before a May 2008 EU deadline. DHS also complimented Czech airport security. It was noted that personnel are vetted by a national security office and issued a badge for access only to their areas of work. They currently have a document inspection laboratory at Prague's international airport, they screen all baggage, and all passengers on direct flights to the US. are re-screened at the gate. DHS also praised the Czech government's air marshal program, which has operated for almost 3 years, and whose marshals have attended training in the US.

OTHER REQUIREMENTS: BIOMETRIC AIR EXIT SYSTEM

¶16. (SBU) DAS Sales explained that the 9/11 Bill requires an enhanced air exit system that can collect 97% of air passenger departures, and DHS expects to achieve this in 6 to 12 months. The current system uses biographic data collected by APIS, generated when the machine readable zone of a passport is scanned by the airlines at airport check-in, and collects 93% of air departures. DHS is analyzing the existing data to understand why 7% of the departures are not captured. The likely causes are data entry errors, visa overstays, and air entries followed by land departures. DHS analysis will estimate visa overstaying rates for nonimmigrant visitor B-1/B-2 visas of VWP countries. Because capturing land departures is probably not feasible, DHS is exploring data sharing agreements with Mexico and Canada, so that entries into those countries could be recorded as departures from the US.

¶17. (C) The 9/11 Bill also requires DHS to implement an air exit system that captures biometric data by June 30, 2009. DHS expects to meet this deadline, although DAS Sales privately acknowledged that biometric data collection could be tied up by litigation from the airlines. Countries admitted to the Visa Waiver Program under the waiver authority in the 9/11 Bill before June 30, 2009, may thus be the last countries admitted until such litigation is resolved.

OTHER REQUIREMENTS : REFUSAL RATES AND OVERSTAYS

¶18. (SBU) Interior Ministry officials expressed concern over the visa refusal rate for Czechs, and its impact on the Czech Republic's eligibility for VWP. Consul General explained that the Czech B visa refusal rate for fiscal year 2006 was 9.4%, and that this fiscal year's refusal rate would be below 9%. He said he was confident that this downward trend would continue. The most recent validation study showed a visa overstaying rate of 2.2%, so this also was unlikely to be a problem. DAS Sales explained that countries that exceed the overstaying rate after one year will be placed on probation, and will be removed from the program if they exceed the overstaying rate the subsequent year.

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NEXT STEPS

¶19. (C) DAS Sales explained that DHS hoped all the moving parts to implementation of the 9/11 Bill and admitting new qualified participants would run concurrently. Thus DHS was already working on the development of the ETA and the improvement to the air exit system. At the same time, he urged the Czechs - and other aspirant countries - to use the information from this trip to study ways in which they could comply with the seven security enhancements. In order to exercise its waiver authority under the Bill, DHS would need

agreements from participating countries to guarantee implementation of the security enhancements. According to DAS Sales, DHS would soon be drafting a model agreement to be used with all prospective VWP countries, but he did not provide a timetable for the draft agreement's completion. Current thinking was that this agreement would take the form of a memorandum of understanding to be signed at the ministry level. Sales and Sullivan worried that if the Czechs submitted the agreement for parliamentary approval, implementation of the agreement would be delayed and parliamentary discussion of security measures could compromise their effectiveness. However, MFA's Horak thought this might be finessed by entering into a framework agreement as a way of moving forward, and it could reference side agreements if necessary.

COMMENT

¶20. (C) During an outbriefing with the DCM, the DHS team expressed concern that the Czechs lacked enthusiasm for the 9/11 Bill and may put up roadblocks to implementation, especially with data privacy. DAS Sales interpreted the Czechs' questions, especially those on data privacy, as a possible shift in policy made at the political level of the Foreign Ministry.

¶21. (C) Post is certain that this is not the case. Czechs were a regional leader in pressing for passage of the 9/11 Bill, but they are embarrassed that the Bill, in the form as passed, benefited them but not some of their allies. This has muted their public enthusiasm, but privately they continue to assure us, as they assured DAS Sales and Sullivan, that they value the Bill and the opportunity it affords them. They also wish to move forward with implementation as quickly as possible. On a practical level that has meant that they have done their homework and have dissected the new law to see what they must do to comply with it. They are working to find a way to share lost and stolen passport information. Their questions regarding the sharing of PNR data were more focused on how to do it rather than whether to do it. In a related area, they are one of only a handful of countries actively engaged in negotiating an HSPD-6 agreement (sharing of known and suspected terrorist watchlist information). Post believes these actions are concrete evidence of Czech determination to do what it takes, not only for the sake of the Visa Waiver Program, but because they value our relationship as good border security partners. Indeed, we believe the Czechs exhibit a sense of urgency: Political Director Povejsil said he wanted to move forward quickly. They are aware not only of the June 30, 2009 deadline, but also their own impending EU Presidency (January 1, 2009), which will sap the government's available energy and resources. They have already requested a meeting with us to discuss next steps, and post believes they are prepared to make a major effort toward implementation.

¶22. (C) We have seen from their work to date on visa waiver, and from their approach to negotiations on missile defense, that the Czechs are reliable and effective partners with the US on high profile issues. We recommend that Washington agencies continue to engage closely with the Czechs on VWP, with a view to bringing them into the program before their upcoming EU presidency.

END COMMENT

GRABER